

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA,

Plaintiff,

v.

NEW YORK STATE DEPARTMENT OF
CORRECTIONAL SERVICES,

Defendant.
----- X

07 Civ. 2243 (DC)

**STIPULATION AND ORDER
OF SETTLEMENT**

ECF Case

WHEREAS, the United States of America (the "United States") commenced this action (the "Action") against the New York State Department of Correctional Services ("DOCS") to enforce Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, as amended ("Title VII");

WHEREAS, in its Complaint, the United States alleged that DOCS, the New York State department responsible for operating the State's correctional facilities, has engaged in an unlawful pattern or practice of employment discrimination on the basis of religion by failing or refusing to accommodate the religious observances, practices, and/or beliefs of DOCS's uniformed personnel who are unable to comply with DOCS's uniform or grooming requirements because of their religious observances, practices, and/or beliefs;

WHEREAS, the United States' Complaint alleged that DOCS maintains and enforces a policy or practice of refusing to grant any accommodation to its uniformed personnel that would alter DOCS's uniform or grooming requirements for reasons of religious observances, practices, and/or beliefs;

WHEREAS, the United States' Complaint further alleged that DOCS discriminated

against Abdus Samad N. Haqq, who is employed by DOCS as a correction officer, on the basis of his religion in violation of Title VII by failing or refusing to reasonably accommodate Mr. Haqq's religious observance, practice, and/or belief as a Muslim of wearing a kufi (i.e., a skullcap);

WHEREAS, on or about October 5, 2006, Mr. Haqq filed a lawsuit against DOCS in the United States District Court for the Southern District of New York, styled *Haqq v. New York State Department of Correctional Services*, 06 Civ. 8156 (HB) (the "Private Action"), alleging, among other things, that DOCS violated Title VII by failing or refusing to reasonably accommodate Mr. Haqq's religious observance, practice, and/or belief of wearing a kufi;

WHEREAS, on or about January 9, 2007, the United States advised DOCS by letter that the United States intended to commence a civil action against DOCS alleging that DOCS had violated Title VII by engaging in a pattern or practice of employment discrimination on the basis of religion by failing to reasonably accommodate religious observances or practices;

WHEREAS, on or about March 16, 2007, DOCS adopted and published a "Revision Notice" adding a new Section X to DOCS's Directive No. 3083, which Directive is entitled "Uniform/Equipment Issues and Appearance" and which outlines the policies and procedures established for issuance, wearing, maintenance, and disposition of all uniform items and accessories by uniformed employees. The "Revision Notice" provides a procedure by which DOCS's uniformed employees may request reasonable accommodations from the requirements contained in Directive No. 3083 based on their sincerely held religious beliefs;

WHEREAS, on or about March 8, 2007, DOCS permitted Mr. Haqq to begin wearing a solid-colored, dark blue or black, close-fitting kufi while on duty as a correction officer for DOCS under certain terms and conditions, and thereafter, Mr. Haqq and DOCS entered into a

settlement agreement resolving the Private Action, approved by the court on May 2, 2007, in which DOCS admitted no liability or wrongdoing;

WHEREAS, DOCS denies the allegations contained in the United States' Complaint and has agreed to settle this Action without admitting fault or liability or any wrongdoing on the part of DOCS;

WHEREAS, the United States and DOCS agree that settlement of this Action without further litigation is in the public interest and that entry of this Stipulation and Order is the most appropriate means of resolving this Action;

NOW, THEREFORE, IT IS HEREBY STIPULATED, AGREED, AND ORDERED AS FOLLOWS:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Action pursuant to 42 U.S.C. § 2000e-6(b) and 28 U.S.C. §§ 1331, 1343, and 1345.
2. Venue lies in this judicial district pursuant to 42 U.S.C. § 2000e-5(f)(3).

GENERAL RELIEF

3. DOCS shall not engage in any act or practice that unlawfully discriminates against any current or prospective employee because of that person's religion, as that term is defined by Title VII, 42 U.S.C. § 2000e(j), with respect to that employee's uniform or personal appearance.
4. DOCS shall not fail or refuse to reasonably accommodate the sincerely held religious observances, practices, and/or beliefs of DOCS's current or prospective uniformed personnel who notify DOCS that they are unable to comply with DOCS's uniform or grooming requirements because of their religious observances, practices, and/or beliefs, unless making such a reasonable accommodation would impose an undue hardship on DOCS.

RELIGIOUS ACCOMMODATION POLICY

5. DOCS shall adhere to a policy (the "Religious Accommodation Policy" or "Policy") that reasonably accommodates the sincerely held religious observances, practices, and/or beliefs of DOCS's uniformed personnel who notify DOCS that they are unable to comply with DOCS's uniform or grooming requirements because of their religious observances, practices, and/or beliefs, unless making such a reasonable accommodation would impose an undue hardship on DOCS.

6. The Policy shall be in writing and include all of the following elements:

a. The Policy shall provide a procedure by which uniformed personnel may request accommodations from uniform or grooming requirements because of their sincerely held religious observances, practices, and/or beliefs;

b. The Policy shall provide for an individualized assessment of each such request for an accommodation;

c. The Policy shall provide that DOCS shall grant a reasonable accommodation in response to a request for an accommodation, made pursuant to the procedure provided in paragraph 6.a herein and based on a sincerely held religious observance, practice, and/or belief, unless based on a thorough evaluation of all facts and circumstances relevant to the individual case (which may include, among other things, the employee's job assignment or the facility in which the employee works), it is demonstrated that granting such an accommodation would work an undue hardship on DOCS;

d. The Policy shall require that any decision to grant or deny, in whole or in part, a request for a religious accommodation made pursuant to the procedure provided in paragraph 6.a shall be memorialized in writing with a copy of the decision provided to the

requesting employee.

7. The parties agree that the Revision Notice adopted by DOCS dated March 16, 2007, adding Section X to DOCS Directive 3083, attached hereto as Exhibit A, shall be considered a Policy in compliance with paragraph 6 (including subparagraphs) of this Stipulation and Order.

8. DOCS's decisions regarding requests for religious accommodation under the Policy shall be governed by the following provisions, unless adhering to such provisions would impose an undue hardship on DOCS as specified in paragraph 6.c:

- a. A request for an accommodation may not be denied solely on the ground that it allows persons, including inmates, to identify the religion of the employee.
- b. Permission to wear a solid-colored, dark blue or black, close-fitting kufi or yarmulke, or long hair worn in a clean and neatly groomed manner and arranged in a style so that the hair does not fall over the ears or eyebrows or extend more than one-half inch below the top of the uniform collar, shall be considered a reasonable accommodation that DOCS will provide to a uniformed employee who requests religious accommodation pursuant to the procedure provided in paragraph 6.a. The accommodations described in this sub-paragraph do not constitute an exclusive list of reasonable accommodations.
- c. If DOCS denies a request for a religious accommodation made pursuant to the procedure provided in paragraph 6.a, it shall, in the written response required by the Policy, state specific reasons for doing so.

9. In the event DOCS modifies the language of Section X of Directive 3083 during the term of this Stipulation and Order, it shall provide prior written notice of the change to the United States, through undersigned counsel. If the United States objects to the change as

inconsistent with the terms and objectives of this Stipulation and Order, it shall notify DOCS of such objection in writing within fourteen days of receipt of DOCS's notice. The United States will not unreasonably object to any proposed change to Section X of Directive 3083 proposed by DOCS. In the event the United States objects to a proposed change in accordance with this paragraph, then the parties shall attempt to resolve the dispute as set forth in paragraph 17 of this Stipulation and Order; provided, however, that if the parties do not resolve the dispute regarding the proposed change within thirty days after DOCS's receipt of the United States' objection to the change, DOCS may petition the Court for a determination of whether the proposed change is consistent with the terms and objectives of the Stipulation and Order. No change to Section X of Directive 3083 shall become effective until either (a) the United States fails to object in writing to the proposal within the time set forth in this paragraph; (b) the United States' objection is resolved by agreement in writing between the parties; or (c) if DOCS petitions the Court as provided in this paragraph, the Court determines that the change is consistent with the terms and objectives of this Stipulation and Order.

RECORD-KEEPING AND REPORTING

10. For the duration of this Stipulation and Order, DOCS shall keep and preserve records of all requests for accommodations made pursuant to the Policy and all written responses to such requests. Once each year, fourteen calendar days prior to the anniversary date of the entry of this Stipulation and Order, and fourteen calendar days prior to the end of the term of this Stipulation and Order, DOCS shall produce to the United States copies of all such requests and responses received in the time since DOCS previously produced such requests and responses.

11. For the duration of this Stipulation and Order, DOCS shall cooperate with all reasonable written requests by the United States for information and documents relevant to assess

DOCS's compliance with this Stipulation and Order.

12. DOCS shall notify the United States of any complaint received by DOCS's Office of Diversity Management during the term of this Stipulation and Order alleging discrimination by DOCS against a DOCS employee on the basis of religion, including but not limited to complaints before the Equal Employment Opportunity Commission or the New York State Division of Human Rights, as well as informal complaints regarding the denial of a requested accommodation. Such notice shall be made in writing and provided to counsel for the United States within thirty days after receipt of such a complaint by DOCS and shall include a copy of the complaint alleging discrimination.

MODIFICATION

13. There shall be no modification of this Stipulation and Order without the written consent of the United States and DOCS, through their respective counsel, and the approval of the Court.

ENTIRE AGREEMENT; NO ADMISSION

14. This Stipulation and Order represents the entire agreement between the United States and DOCS concerning the subject matter described herein. No prior agreements, oral representations, or statements shall be considered part of this Stipulation and Order.

15. Nothing in this Stipulation and Order shall be construed as an admission or acknowledgment of liability, wrongdoing, or violation of law by DOCS regarding any of the allegations contained in the Complaint in this Action.

TERM; RETENTION OF JURISDICTION

16. The term of this Stipulation and Order shall begin on the date it is entered by the Court and continue through July 1, 2010, and this Court shall retain jurisdiction of this Action for

such period to enforce or modify the provisions of this Stipulation and Order, to resolve any dispute that arises under this Stipulation and Order, and to entertain any application and issue any orders as may be necessary or appropriate for the effectuation of its terms and objectives.

17. The parties shall attempt to informally resolve any disputes, concerns, or perceived violations that may arise under this Stipulation and Order. To that end, the United States will notify DOCS in writing of any perceived instances of non-compliance with this Stipulation and Order's terms, and DOCS may respond in writing within thirty days. The parties agree to meet and confer in good faith to attempt to resolve such matters prior to seeking the intervention of the Court. In no event shall the United States make any motion to enforce this Stipulation and Order less than forty-five days after providing DOCS with written notice of the perceived violation as required by this paragraph. If, after receiving written notification of any perceived non-compliance with this Stipulation and Order's terms, DOCS cures the alleged non-compliance to the satisfaction of the United States, the United States agrees not to seek relief from the Court relating to the non-compliance, including, but not limited to, an order of contempt.

EXECUTION OF STIPULATION AND ORDER

18. This Stipulation and Order may be executed in counterparts, each of which shall be an original and shall constitute one and the same instrument.

COSTS AND ATTORNEY'S FEES

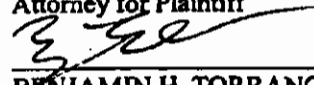
19. Each party shall bear its own costs and attorney's fees in this Action.

THE PARTIES HEREBY CONSENT to entry of the foregoing Stipulation and Order.

Dated: New York, New York
January 11, 2008

MICHAEL J. GARCIA
United States Attorney for the Southern
District of New York
Attorney for Plaintiff

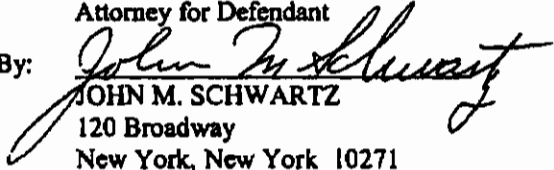
By:


BENJAMIN H. TORRANCE
86 Chambers Street
New York, New York 10007
Telephone: 212.637.2703

Dated: New York, New York
January 11, 2008

ANDREW M. CUOMO
Attorney General of the State of
New York
Attorney for Defendant

By:


JOHN M. SCHWARTZ
120 Broadway
New York, New York 10271
Telephone: 212.416.8559

SO ORDERED.

Dated: New York, New York
January 18, 2008


DENNY CHIN, U.S.D.J.



1/18/08

Exhibit A

MAR-21-2007 12:32

NYS

P.02

 <p>STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES REVISION NOTICE</p>	<p>TITLE Uniform/Equipment Issue and Appearance</p>		<p>NO. 3083</p>
<p>REVISED DIR# 3083 Dtd. 02/02/07</p>	<p>DISTRIBUTION A</p>	<p>PAGES PAGE 1 OF 1</p>	<p>DATE MAR 16 2007</p>
<p>REFERENCE (include but are not limited to)</p>		<p>APPROVING AUTHORITY </p>	

- ☐ Add new section X. as stated below, and renumber existing sections X. XI. XII. to XI, XII. and XIII.

X. RELIGIOUS ACCOMMODATION: Uniformed employees may request a reasonable accommodation, based on their sincerely held religious beliefs, from the requirements outlined in this Directive, and the Department will provide such reasonable accommodation unless doing so would result in an undue hardship on the Department.

A request for a reasonable accommodation based on sincerely held religious beliefs will be individually assessed by the Department. In determining whether a requested accommodation is reasonable or whether the requested accommodation will create an undue hardship on the Department, the Department will evaluate the facts and circumstances relevant to the individual employee situation. These facts and circumstances may include, but may not be limited to: the employee's job duties and assignments; the facility at which the employee works; the work location within the facility; the custodial obligation the Department has to inmates; the impact the requested accommodation has on employees similarly situated; whether the requested accommodation requires more than ordinary administrative costs, diminishes efficiency in other jobs, or infringes on other employees' rights or benefits; workplace safety; other laws or regulations; and/or whether the requested accommodation negatively impacts or jeopardizes the safety and security of the requesting employee, other employees, inmates, and/or the public.

A request for religious accommodation may be addressed through various means, including but not limited to voluntary substitutions or swaps, job reassignments, or modification of workplace policies, practices, or procedures.

To request a reasonable accommodation under this section, an employee should submit a written request stating the basis for the request and the accommodation requested and should send that request to the Director, Office of Diversity Management, NYS Department of Correctional Services, 1220 Washington Avenue, Albany, New York 12226. A copy of the request should also be sent to the Director, Office of Personnel, NYS Department of Correctional Services, 1220 Washington Avenue, Albany, New York 12226.

A written response to the request will be forwarded to the employee.